

C.D. Michel – SBN 144258
Mathew D. Cubeiro – SBN 291519
Alexander A. Frank – SBN 311718
MICHEL & ASSOCIATES, P.C.
180 E. Ocean Boulevard, Suite 200
Long Beach, CA 90802
Telephone: (562) 216-4444
Facsimile: (562) 216-4445
Email: cmichel@michellawyers.com

Attorneys for Plaintiff Brad D. Brinson

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

BRAD D. BRINSON, an individual;

Plaintiff,

v.

MERRICK B. GARLAND, in his official
capacity as Attorney General of the
United States; ROB BONTA, in his
official capacity as Attorney General of
the State of California; and DOES 1-10

Defendants.

Case No.:

**COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF**

Plaintiff Brad D. Brinson brings this action against Merrick Garland, in his official capacity as Attorney General of the United States, and Robert Bonta, in his official capacity as Attorney General of the State of California, and DOES 1-10, and makes the following allegations.

INTRODUCTION

1. Plaintiff Brad D. Brinson is a law-abiding citizen of the United States who is not prohibited from owning or possessing firearms.

2. In 1997, Plaintiff was convicted of California Penal Code section 243(e).

3. In 2014, Plaintiff was denied a lawful firearm purchase after Defendants labeled him prohibited from owning or possessing firearms due to his 1997 conviction.

4. Plaintiff, through counsel, contested the denial with Defendants. Following correspondence with Assistant General Counsel of the Office of the General Counsel of the Federal Bureau of Investigation, and Deputy Attorney General to the Attorney General of California, it was confirmed that Plaintiff was not prohibited from owning or possessing firearms due to his 1997 conviction for California Penal Code section 243(e).

5. After confirming Plaintiff was not prohibited from owning or possessing firearms, Plaintiff was lawfully able to purchase and acquire firearms for a number of years.

6. In 2018, Plaintiff attempted to purchase a firearm but was again denied by Defendants due to his 1997 conviction.

7. Plaintiff has no other convictions or issues that would prohibit him from owning or possessing firearms.

8. Plaintiff, through counsel, again contested the denial but to no avail.

9. Plaintiff now brings this lawsuit.

PARTIES

10. Plaintiff BRAD D. BRINSON (“Plaintiff”) is an individual who is a citizen of the state of California. He resides in San Francisco County.

11. Defendant MERRICK B. GARLAND is the Attorney General of the United States. In his official capacity as Attorney General, Defendant Garland is the chief law enforcement officer of the United States, and he has the authority and power to dedicate federal law enforcement resources, include those of the Federal Bureau of Investigation (“FBI”) and the Bureau of Alcohol, Tobacco, Firearms and Explosives (“ATF”) to

1 enforce the policies and practices of the Attorney General and the Department of Justice
2 as it relates to firearms, including required federal background checks on prospective
3 firearm purchasers.

4 12. Defendant ROB BONTA is the Attorney General for the State of California.
5 He is the chief law enforcement officer of California. Defendant Bonta is charged by
6 Article V, Section 13 of the California Constitution with the duty to see that the laws of
7 California are uniformly and adequately enforced. Defendant Bonta also has direct
8 supervision over every district attorney, sheriff, and all personnel managing the firearm
9 background check system and correction of criminal records for the State of California in
10 all matters pertaining to the duties of their respective assignments. In this regard,
11 Defendant Bonta has direct supervisory authority over the Director of the Bureau of
12 Firearms and Director of the Bureau of Criminal Information and Analysis and the
13 Records Review and Challenge Section. Defendant Bonta also has the responsibility to
14 enforce state laws that do not interfere with federal law and to not act in a manner that
15 would interfere with federally protected rights by misuse of power entrusted to him under
16 state law.

17 13. The true names or capacities, whether individual, corporate, associate, or
18 otherwise of the Defendants named herein as DOES 1-10, are presently unknown to
19 Plaintiff, who therefore sues said Defendants by such fictitious names. Plaintiffs pray for
20 leave to amend this Complaint to show the true names or capacities of these Defendants
21 if, and when, the same has been determined.

22 14. Defendants Garland, Bonta, and Does 1-10 are responsible for formulating,
23 executing, and administering state and federal firearm laws and correction of criminal
24 records at issue in this lawsuit and are in fact presently enforcing them.

25 15. Defendants enforce firearm laws against Plaintiff and other citizens under
26 color of law within the meaning of section 1983 of Title 42 of the United States Code.

27 **JURISDICTION AND VENUE**

28 16. This Court has original jurisdiction over this action pursuant to 28 U.S.C. §

1 1331 because this action arises under a federal statute, 18 U.S.C. § 925A.

2 17. The Court also has jurisdiction under 28 U.S.C. § 1343(a)(3), 42 U.S.C. §
3 1983, and 18 U.S.C. 925A because this action seeks to redress the deprivation, under
4 color of the laws, statutes, ordinances, regulations, customs and usages of the State of
5 California and political subdivisions thereof, of rights, privileges or immunities secured
6 by the United States Constitution and by Acts of Congress.

7 18. Venue in this judicial district is proper under 28 U.S.C. § 1391(b)(2) because
8 a substantial part of the events or omissions giving rise to Plaintiff's claim occurred in
9 this district.

10 **STATEMENT OF FACTS**

11 19. Federal law requires any person engaged in the business of selling or
12 transferring firearms to possess a valid federal firearms license ("FFL"). 18 U.S.C. §
13 922(a)(1)(A).

14 20. Any sales or dispositions of a firearm by an FFL generally require the
15 purchaser or transferee to complete ATF Form 4473. 18 U.S.C. § 923(g); 27 C.F.R. §
16 478.124.

17 21. As stated in ATF Form 4473, the information provided by the purchaser or
18 transferee is used to determine whether the purchaser or transferee is prohibited by
19 Federal or State law from receiving a firearm.

20 22. To determine whether the purchaser or transferee is prohibited, the
21 information provided in ATF Form 4473 is typically transmitted by the FFL to the
22 National Instant Criminal Background Check System ("NICS").

23 23. California is one of 13 "Full Point of Contact" States, meaning the
24 California Department of Justice ("DOJ") is designated to conduct firearm background
25 checks for FFLs in California in lieu of the FFL transmitting the information in ATF
26 Form 4473 to NICS directly.

27 24. To process firearm background checks in California, DOJ requires
28 California FFLs to submit a Dealer Record of Sale ("DROS") through a web-based

1 application known as the DROS Entry System (“DES”).

2 25. The information contained in a DROS contains much of the same
3 information provided in ATF Form 4473. But instead of being completed by the
4 purchaser or transferee, a DROS is completed by the FFL using the information provided
5 by the purchaser or transferee.

6 26. Once submitted, the information provided in the DROS is used by DOJ to
7 determine whether the purchaser or transferee is prohibited from owning or possessing
8 firearms. DOJ will reference all the NICS databases, as well as several additional state
9 databases, in making its determination.

10 27. Pursuant to section 922(g)(9) of Title 18 of the United States Code,
11 individuals who have been convicted of a misdemeanor crime of domestic violence are
12 prohibited from possessing firearms for life.

13 28. A “misdemeanor crime of domestic violence” is defined under federal law as
14 an offense that:

15 *[H]as, as an element, the use or attempted use of physical force, or the*
16 *threatened use of a deadly weapon, committed by a current or former*
17 *spouse, parent, or guardian of the victim, by a person with whom the victim*
18 *shares a child in common, by a person who is cohabitating with or has*
19 *cohabitated with the victim as a spouse, parent, or guardian, or by a person*
20 *similarly situated to a spouse, parent, or guardian of the victim.*

21 18 U.S.C. § 921(a)(33)(A)(ii) (effective until June 25, 2022).

22 29. On June 25, 2022, this definition was amended following the enactment of
23 the Bipartisan Safer Communities Act to now read:

24 *[H]as, as an element, the use or attempted use of physical force, or the*
25 *threatened use of a deadly weapon, committed by a current or former*
26 *spouse, parent, or guardian of the victim, by a person with whom the victim*
27 *shares a child in common, by a person who is cohabitating with or has*
28 *cohabitated with the victim as a spouse, parent, or guardian, by a person*

1 *similarly situated to a spouse, parent, or guardian of the victim, or by a*
 2 *person who has a current or recent former dating relationship with the*
 3 *victim.*

4 117 P.L. 159 (codified at 18 U.S.C. § 921(a)(33)(A)(ii)) (emphasis added).

5 30. The Bipartisan Safer Communities Act includes a provision that precludes
 6 its retroactive application, stating the changes made “shall not apply to any conviction of
 7 a misdemeanor crime of domestic violence entered before the date of enactment of this
 8 Act,” occurring here on June 25, 2022. 117 P.L. 159 at Sec. 12005(b).

9 31. Plaintiff was convicted of violating California Penal Code section 243(e) on
 10 August 21, 1997. The victim was a woman with whom Plaintiff was involved in a dating
 11 relationship.

12 32. Under federal law at the time of his conviction, a dating relationship is
 13 insufficient to qualify as a misdemeanor crime of domestic violence; and therefore does
 14 not trigger the “misdemeanor crime of domestic violence” prohibition under 18 U.S.C.
 15 922(g)(9). *See United States v. Nobriga*, 408 F.3d 1178, 1183 (9th Cir. 2005).

16 33. In 2014, Plaintiff attempted to lawfully purchase a firearm but was denied.
 17 Plaintiff learned that DOJ considered him prohibited due to his 1997 conviction.

18 34. Plaintiff retained counsel, who contacted both Deputy Attorney General
 19 Kimberly Granger of DOJ and William Finch, Assistant General Counsel of the Office of
 20 the General Counsel of the Federal Bureau of Investigation, concerning Plaintiff’s denial.

21 35. On July 30, 2014, Assistant General Counsel Finch responded to Plaintiff’s
 22 counsel informing him that, after reviewing Plaintiff’s conviction, he agreed Plaintiff is
 23 “not federally prohibited” and that his relationship with the victim “is and was a dating
 24 relationship” that “does not qualify the conviction as a misdemeanor crime of domestic
 25 violence” under federal law. Assistant General Counsel Finch goes further to state that
 26 Plaintiff “is not federally prohibited by his August 21, 1997 conviction from possessing
 27 or receiving a firearm.”

28 36. Following the above communication from Assistant General Counsel Finch,

1 Plaintiff's counsel proceeded to contact Deputy Attorney General Kimberly Granger
2 concerning Plaintiff's denial.

3 37. Deputy Attorney General Granger informed Plaintiff's counsel that she
4 attempted to contact Mr. Finch who had since retired. As a result, Deputy Attorney
5 General contacted another attorney at the FBI, Drew Crislip, "to verify NICS'
6 understanding" of Plaintiff's criminal history.

7 38. After confirming with this second attorney at the FBI, Deputy Attorney
8 General Granger informed Plaintiff's counsel that DOJ personnel "agreed with Mr.
9 Finch's determination" and that DOJ "made a notation of this fact on Mr. Brinson's
10 record and barring any other prohibiting offense/circumstance, he may reapply for a gun
11 purchase."

12 39. Plaintiff was able to lawfully purchase firearms following the above
13 correspondence.

14 40. But on November 23, 2018, Plaintiff attempted to lawfully purchase a
15 firearm at a California dealer and was denied. Plaintiff later learned that DOJ labeled him
16 prohibited due to his 1997 conviction.

17 41. Plaintiff's counsel contact Deputy Attorney General Robert Wilson,
18 successor to Deputy Attorney General Granger, and included a copy of the prior
19 correspondence between the FBI and DOJ concerning Plaintiff's conviction.

20 42. Plaintiff has no other reason to be ineligible for lawful transfer and
21 possession of a firearm. He has no other criminal history, mental health history,
22 restraining order history, or any other reason to be prohibited and ineligible whatsoever.

23 43. Plaintiff has also been forced to dispossess himself of the firearms he
24 lawfully acquired.

25 44. To date, Plaintiff has not been informed whether he is being denied by the
26 FBI, DOJ, or both.

27 45. Plaintiff's counsel has since been unable to resolve this issue despite
28 exercising all possible administrative remedies. As a result, Plaintiff has been left with no

choice but to file this lawsuit.

FIRST CLAIM FOR RELIEF
Erroneous Denial of Firearm
18 U.S.C. § 925A

(By Plaintiff against all Defendants and Does 1-10)

46. Paragraphs 1 through 45 are realleged and incorporated by reference as if fully set forth herein.

47. Any person who is denied a firearm pursuant to section 922(s) or 922(t) of Title 18 of the United States Code due to the provision of erroneous information relating to the person by any State or political subdivision thereof, or by NICS, may bring an action for an order directing that the erroneous information be corrected or that the transfer be approved, as the case may be.

48. Plaintiff is eligible to lawfully acquire, own, and possess firearms.

49. Plaintiff has been erroneously denied a lawful firearm transfer and erroneously labeled prohibited from owning or possessing firearms.

50. Either DOJ, the FBI, or both have taken the erroneous position that Plaintiff's 1997 conviction under Penal Code section 243(e) prohibits him from taking lawful transfer of a firearm.

51. Defendants, through their counsel and appropriate designees, have confirmed that Plaintiff is not prohibited from owning or possessing firearms despite his 1997 conviction under Penal Code section 243(e).

52. Defendants, through their counsel and appropriate designees, have also confirmed that Plaintiff's 1997 conviction under Penal Code section 243(e) is not a "misdemeanor crime of domestic violence" as that term is defined under section 921 of Title 18 of the United States Code.

53. Despite confirming Plaintiff is not prohibited from owning or possessing firearms, Defendants have erroneously denied Plaintiff a lawful firearm transfer and have labeled him prohibited from owning or possessing firearms as having been convicted of a "misdemeanor crime of domestic violence" due to his 1997 conviction under Penal Code

section 243(e).

SECOND CLAIM FOR RELIEF
Violation of the Right to Keep and Bear Arms
U.S. Const. amend. II and XIV

(By Plaintiff against all Defendants and Does 1-10)

54. Paragraphs 1 through 53 are realleged and incorporated by reference as if fully set forth herein.

55. The Second Amendment to the United States Constitution declares that “the right of the people to keep and bear arms shall not be infringed.” U.S. Const. amend. II. This right of the people to keep and bear arms has been applied as an individual right of law-abiding citizens for lawful purposes. *District of Columbia v. Heller*, 554 U.S. 628 (2008). The Second Amendment is incorporated to the States through the Fourteenth Amendment. U.S. Const. amend XIV.¹

56. The United States Supreme Court has concluded (four times) that “[s]elf-defense is a basic right, recognized by many legal systems from ancient times to the present day, and . . . individual self-defense is ‘the central component’ of the Second Amendment right.” *McDonald v. City of Chicago*, 561 U.S. 742, 767 (2010) (quoting *Heller*, 554 U.S. at 628); *see also Caetano v. Massachusetts*, 577 U.S. 411, 413 (2016); *New York State Rifle & Pistol Ass’n v. Bruen*, 597 U.S. at ___, 142 S. Ct. 2111, 2126, 2156 (2022).

57. The Supreme Court has also held that the Second Amendment right to keep and bear arms is incorporated into the Due Process Clause of the Fourteenth Amendment and so may not be infringed by state and local governments. *McDonald*, 561 U.S. at 750.

58. Defendants’ failure to recognize that Plaintiff’s conviction is not one that

¹ “No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law . . .” Senator Jacob Howard, when introducing the amendment, explained that its purpose was to protect “personal rights” such as “the right to keep and bear arms” from State infringement. CONG. GLOBE, 39th 1st Sess., 2765 (May 23, 1866).

1 would prevent him from lawfully obtaining a firearm despite confirming it is not in
 2 written communication to Plaintiff's counsel, refusal to issue Plaintiff a positive
 3 disposition to purchase a firearm, and labeling Plaintiff prohibited from owning or
 4 possessing firearms, is a direct attack upon Plaintiff's Second Amendment Rights.
 5 Defendants are continually violating Plaintiff's rights by failing to correct their systems
 6 or properly interpret his records so that proper notice is provided to those conducting the
 7 background services.

8 59. When a person is improperly denied the right to keep and bear arms due to
 9 inaccuracy of the federal government or state government's system for processing
 10 accurate information, it is a direct violation of the individual's constitutional rights.

11 60. A action brought pursuant to section 1983 of Title 42 of the United States
 12 Code is proper where "the deprivation of any rights, privileges, or immunities, secured by
 13 the Constitution and laws, by a person acting under the color of law." Such a claim may
 14 be asserted against a state official for constitutional violations when such claim seeks
 15 only prospective relief. *See Ex Parte Young*, 209 U.S. 123, 155-56 (1908).

16 **THIRD CLAIM FOR RELIEF**
 17 **Violation of the Equal Protection Clause**
 18 **U.S. Const. amend. XIV**

19 (By Plaintiff against all Defendants and Does 1-10)

20 61. Paragraphs 1 through 60 are realleged and incorporated by reference as if
 21 fully set forth herein.

22 62. The Equal Protection Clause of the Fourteenth Amendment of the United
 23 States Constitution prohibits states from denying any person within its territory equal
 24 protection of the laws. U.S. CONST. amend. XIV. This means that a state must treat an
 25 individual in the same manner as others in similar conditions and circumstances.

26 63. The purpose of the Equal Protection Clause is to force the federal and state
 27 governments to govern impartially and not draw differences in individuals for items that
 28 are irrelevant to a legitimate government purpose and is essential to the equal protection

1 of civil rights.

2 64. An § 1983 action may be brought against a person acting “under the color of
3 law.” Liability lies against those “who carry a badge of authority of a State and represent
4 it in some capacity, whether they act in accordance with their authority or misuse it.”
5 *Monroe v. Pape*, 365 U.S. 167, 172 (1971). A state official interferes with federal rights
6 by either enforcing state laws that conflict with federal law or when the state official
7 deprives persons of their federal rights. *Home Telephone and Telegraph v. Los Angeles*,
8 227 U.S. 278, 288 (1913). A § 1983 claim may be asserted against a state official for
9 constitutional violations when such claim seeks only prospective relief. *See Ex Parte*
10 *Young*, 209 U.S. at 155-56.

11 65. Defendants, acting under color of law, have repeatedly and continually
12 denied the right of Plaintiff by denying him equal protection. Plaintiff is a law-abiding
13 citizen who is not prohibited from owning or possessing firearms as confirmed by both
14 the California Department of Justice and the Federal Bureau of Investigation. Yet
15 Plaintiff has been improperly denied a firearm purchase and continues to deny Plaintiff
16 his Second Amendment rights by failing to protect his interests through proper and
17 corrective measures regarding his records or through proper interpretation of those
18 records. Defendants, acting under color of law when denying Plaintiff’s constitutional
19 rights, are therefore liable as individuals and in their official capacity under section 1983
20 of Title 42 of the United States Code.

21 **DECLARATORY JUDGMENT AND INJUNCTIVE RELIEF ALLEGATIONS**

22 66. Paragraphs 1 through 65 are realleged and incorporated by reference as if
23 fully set forth herein.

24 67. There is an actual and present controversy between the parties. Plaintiff
25 contends that Defendants’ denial of Plaintiff’s ability to purchase a firearm infringes on
26 Plaintiff’s right to keep and bear arms under the Second and Fourteenth Amendments to
27 the United States Constitution, by imposing upon Plaintiff a restriction which is imposed
28 upon those convicted of a misdemeanor crime of domestic violence which he has not

1 been convicted of. Plaintiff contends that there has been a violation of his rights because
2 of Defendants failing to properly interpret his criminal records.

3 68. Plaintiff has exhausted all possible administrative remedies through counsel
4 and attempted communications with Defendants, who have assured him his conviction
5 does not qualify as a misdemeanor crime of domestic violence and is therefore not
6 prohibited from owning or possessing firearms.

7 69. Plaintiff further contends that he has been denied equal protection under the
8 law by Defendants, acting under color of law, by denying him a lawful firearm purchase,
9 or, in the alternative, to properly interpret his criminal record in a manner consistent with
10 state and federal law. Defendant's refusal to afford Plaintiff equal protection of the law
11 has resulted in Plaintiff's ability to exercise his Second Amendment right to keep and
12 bear arms being infringed despite Defendant's prior assurances. Plaintiff desires a judicial
13 declaration that the actions of Defendants, and each of them, have violated the
14 constitutional rights of Plaintiff.

15 70. If not enjoined by the Court, Defendants will continue to deny Plaintiff his
16 constitutional rights and continue to deny him the ability to purchase a firearm as such
17 denial is defined under section 925A of Title 18 of the United States Code.

18 **PRAYER FOR RELIEF**

19 Plaintiff prays that the Court:

20 1. Enter a declaratory judgment that Defendants have erroneously violated
21 Plaintiff's rights under the U.S. Constitution;

22 2. Enter an order finding that Plaintiff has erroneously been denied a firearm
23 transfer;

24 3. Enter an order finding that Plaintiff has been erroneously labeled prohibited
25 from owning or possessing firearms by Defendants;

26 4. Enter an order directing Defendants to make any and all corrections to State and
27 Federal databases to ensure Plaintiff is no longer erroneously denied a firearm transfer or
28 labeled prohibited from owning or possessing firearms;

1 5. Award Plaintiff all reasonable attorneys' fees and costs pursuant to 18 U.S.C. §
2 925A and 42 U.S.C. § 1983; and

3 6. Grant any such other and further relief as the Court may deem proper.
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6 Dated: December 22, 2022

MICHEL & ASSOCIATES, P.C.

7
8 *s/ C.D. Michel*

9 C.D. Michel

Counsel for Plaintiff
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